

DAVIS WRIGHT TREMAINE LLP

THOMAS R. BURKE (CA State Bar No. 141930)
 DAVIS WRIGHT TREMAINE LLP
 505 Montgomery Street, Suite 800
 San Francisco, California 94111
 Telephone: (415) 276-6500
 Facsimile: (415) 276-6599
 Email: thomasburke@dwt.com

RONALD G. LONDON (Pro Hac Vice pending)
 DAVIS WRIGHT TREMAINE LLP
 1919 Pennsylvania Ave., N.W., Suite 800
 Washington, DC 20006
 Telephone: (202) 973-4200
 Email: ronnielondon@dwt.com

DAVID HALPERIN (Pro Hac Vice pending)
 1530 P Street NW
 Washington, DC 20005
 Telephone: (202) 905-3434
 Email: davidhalperindc@gmail.com

Attorneys for Plaintiff Public.Resource.Org

IN THE UNITED STATES DISTRICT COURT
 THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

PUBLIC.RESOURCE.ORG., a California non-profit organization,

Plaintiff,

v.

UNITED STATES INTERNAL REVENUE
 SERVICE,

Defendant.

Case No. **CV 13 2789**

**PLAINTIFF PUBLIC.RESOURCE.ORG'S
 COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF FOR VIOLATIONS OF THE ADMINISTRATIVE
 PROCEDURE AND FREEDOM OF
 INFORMATION ACTS**

The Plaintiff, Public.Resource.Org, Inc. ("Public.Resource.Org"), a 501(c)(3) nonprofit organization, for its complaint against the United States Internal Revenue Service ("IRS"), states as follows:

INTRODUCTION

1. This is an action for declaratory and injunctive relief under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* ("APA"), to invalidate as arbitrary and capricious, and not in accordance with law, action by the IRS classifying certain records in its possession and

FILED

JUN 18 2013

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

NC

1 control as not subject to release through the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*
 2 (“FOIA”), and for declaratory and injunctive relief under FOIA to require the IRS to release
 3 certain records that it has withheld improperly in response to a FOIA request by
 4 Public.Resource.Org.

5 2. Public.Resource.Org seeks judicial review under the APA to reverse the IRS’s
 6 policy that IRS Form 990 tax records filed electronically by tax-exempt nonprofit organizations
 7 (“NPOs”), as held by the IRS in Modernized e-File (“MeF”) format, are “excluded from disclosure
 8 in response to [] FOIA” on grounds that “established IRS procedure” requires them to be obtained
 9 instead in non-MeF format thorough a “Request for Public Inspection.” Public.Resource.Org also
 10 requests an order compelling the IRS to grant Public.Resource.Org’s FOIA request that sought
 11 IRS Form 990s for nine tax-exempt nonprofit organizations, specifically in MeF or other machine-
 12 readable format, as mandated by FOIA Section 552(a)(3)(B), which requires federal agencies to
 13 “provide [] record[s] in any form or format requested ... if the[y are] easily reproducible by the
 14 agency in that form or format.”

15 3. There is no dispute that the IRS receives Form 990 tax records electronically from
 16 NPOs and maintains them in the same machine-readable manner in which they are originally filed
 17 by the NPOs with the IRS as MeF files. It is undisputed that the IRS has MeF-formatted Form
 18 990s for the NPOs identified in Public.Resource.Org’s FOIA request. There is no technical or
 19 similar reason that the IRS cannot produce to Public.Resource.Org in MeF format copies of the
 20 Form 990s for the NPOs specified. There is also no dispute that non-MeF versions of Form 990s
 21 that the IRS has offered Public.Resource.Org, as publicly available records, which the IRS claims
 22 remove all of the MeF versions from FOIA, are far less useful than the MeF versions, and accord-
 23 ingly, that the Form 990s in their disparate formats are not equivalents. The Treasury Department
 24 itself realizes that machine-readable Form 990 data is more usable to “researchers, analysts and
 25 entrepreneurs [looking] to understand the tax-exempt sector better and to create information tools
 26 and services to meet the needs of the sector.” (Department of the Treasury, General Explanations
 27 of the Administration’s Fiscal Year 2014 Revenue Proposals, p. 174, April, 2013,
 28

<http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2014.pdf>.)

4. Indeed, as part of the Obama Administration's desire to have the federal government operate more transparently, Office of Management and Budget ("OMB") Circular No. A-130, which applies to information practices of all executive branch agencies, requires agencies to disseminate information on "equitable and timely terms" and to "avoid improperly restrictive practices." (OMB Transmittal Memorandum 4, Circular No. A-130 Revised, 11/28/2000, page 9, <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a130/a130trans4.pdf>.) President Obama's Directive M10-06 on Open Government issued on December 8, 2009, further asserts that agencies should "take prompt steps to expand access to information by making it available online in open formats." (OMB Memorandum M-10-06, December 8, 2009, http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf.)

5. President Obama's May, 9, 2013, Executive Order, "Making Open and Machine Readable the New Default for Government Information," provides that "the default state of new and modernized Government information resources shall be open and machine readable." (<http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government>.)

6. This APA and FOIA action is required because the IRS steadfastly refuses to provide the transparency that other components of the executive branch easily recognize as being necessary. The IRS's position that agency records consisting of MeF versions of Form 990 are not subject to FOIA, because **non-MeF** (non-machine-readable) versions are available without resort to FOIA, erroneously treats MeF and non-MeF files interchangeably, and is arbitrary and capricious. That position also violates 5 U.S.C. § 552(a)(3)(B) because MeF-formatted Form 990s are "easily producible by [the IRS] in that form." Accordingly, the IRS's policy on MeF Form 990s must be invalidated under the APA, and for the same reasons, the IRS's refusal to grant Public.Resource.Org's FOIA request for specified MeF Form 990s violates FOIA, and must be reversed in favor of an order compelling disclosure.

7. Without a court order, Public.Resource.Org is informed and believes that the IRS will, for the foreseeable future, continue to deny access to Form 990 tax records in a machine-readable format. Thus, by this lawsuit, Public.Resource.Org seeks declaratory relief stating that the IRS's policy that its MeF-formatted Form 990s are not subject to FOIA is unlawful, and an order permanently enjoining the IRS from continuing to treat MeF-formatted Form 990s in the IRS's possession and control as exempt from FOIA. In addition Public.Resource.Org seeks declaratory relief stating that in refusing to process and satisfy Public.Resource.Org's FOIA request for nine specific Form 990s in MeF format, the IRS violated 5 U.S.C. § 552(a)(3)(B), which requires the IRS to "provide the record[s] in any form or format requested ... if the record is easily reproducible by the agency in that form or format." Public.Resource.Org further seeks an injunction compelling the IRS to release the Form 990s specified in its FOIA request within 15 days of the Court's decision in this matter, and attorney fees and costs, and such other relief as the Court deems appropriate.

JURISDICTION

8. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 552(a)(4)(B), 702, and 704, and 28 U.S.C. § 1331. Declaratory and injunctive relief are authorized by 5 U.S.C. § 703 and by 28 U.S.C. §§ 2201 and 2202. See also Fed. R. Civ. P. 65.

VENUE

9. Venue in the Northern District of California is proper under 5 U.S.C. §§ 552(a)(4)(B) and 703, and under 28 U.S.C. § 1391(e).

PARTIES

10. Plaintiff Public.Resource.Org, a 501(c)(3) nonprofit organization dedicated to improving public access to government records and the law, is organized under the laws of the State of California with its operations in Sebastopol, California.

11. Defendant United States Internal Revenue Service is a federal agency within the meaning of 5 U.S.C. §§ 551, 552(a), and 552(f).

FACTS

12. Public.Resource.Org repeats and realleges the allegations contained in paragraphs 1 through 11 above, inclusive.

About Public.Resource.Org

13. Public.Resource.Org has made numerous contributions to the public interest by facilitating greater public access to government information, as recognized by, among others, the Judicial Conference of the United States and members of Congress. Public.Resource.Org's numerous projects in this regard include, but are by no means limited to:

- Copying over 6,000 government videos and making them available without restriction on YouTube and the Internet Archive, a service that has received over 45 million views. (See Brian Stelter, "Duplicating Federal Videos for an Online Archive," New York Times, March 14, 2010, <http://www.nytimes.com/2010/03/15/technology/15fedflix.html>.) The videos may be accessed on YouTube at <http://www.youtube.com/user/PublicResourceOrg> and on the Internet Archive at <http://archive.org/details/FedFlix>.
- Working with the Speaker of the House, Public.Resource.Org made available a complete archive of video from select committees of the House of Representative. (See Hon. John Boehner and Hon. Darrell Issa, Letter to Carl Malamud, January 5, 2011, https://bulk.resource.org/courts.gov/foia/gov.house.20110105_from.pdf. See also Nancy Scola, "Malamud and House Leadership Team up to Make Congress's Videos Uber-Public," TechPresident, January 6, 2011, <http://techpresident.com/blog-entry/malamud-and-house-leadership-team-make-congresss-videos-%C3%BCber-public>.)
- Performing a comprehensive audit of privacy violations in the PACER system, a service that received gratitude from the Judicial Conference and from several judges. (See Hon. Lee H. Rosenthal, Letter to Carl Malamud, Committee on Rules of Practice and Procedure, Judicial Conference of the United States, July 16, 2008, <https://public.resource.org/scribd/7512576.pdf>. See also Hon. Royce C. Lamberth,

Letter to Carl Malamud, United States District Court for the District of Columbia, January 28, 2009, <https://public.resource.org/scribd/11851306.pdf>.)

- Posting online a complete historical archive of opinions of the U.S. Courts of Appeals. (See John Markoff, "Score One for the Web's Don Quixote," New York Times, November 14, 2007, <http://bits.blogs.nytimes.com/2007/11/14/score-one-for-the-webs-don-quixote/> and Nathan Halverson, "1.8 million rulings online – and free," Santa Rosa Press Democrat, February 13, 2008, <http://www.pressdemocrat.com/article/20080213/NEWS/802130315>.)

- Mr. Malamud, the founder of Public.Resource.Org has made a large number of government databases available to the public. In the 1990s, as the head of the nonprofit Internet Multicasting Service, Malamud was responsible for placing the U.S. Securities & Exchange Commission's ("SEC") EDGAR database and the U.S. Patent Database online. (See John Markoff, "Group to Widen Access to Federal Database," New York Times, December 23, 1994, <http://www.nytimes.com/1994/12/23/business/group-to-widen-access-to-federal-databases.html>. See also John Markoff, "U.S. to Release Patent Data on a World Wide Web Site," New York Times, June 25, 1998, <http://www.nytimes.com/1998/06/25/business/us-to-release-patent-data-on-a-world-wide-web-site.html>.)

NPOs' Role in the Economy, Their Filings with the IRS, and the Need for Transparency

14. The nonprofit sector is a key part of the United States economy. There are 1.5 million tax-exempt organizations with 2009 revenues of \$1.87 trillion and \$4.3 trillion in assets according to The Urban Institute.

15. NPOs account for 9.2% of all wages and salaries paid in the United States. (See Katie L. Roeger, Amy Blackwood, and Sarah L. Pettijohn, 2011, "The Nonprofit Sector in Brief: Public Charities, Giving and Volunteering, 2011." Urban Institute, National Center for Charitable Statistics, Core Files (1999–2009). <http://www.urban.org/taxandcharities/Size-and-Financial-Scope-of-the-Nonprofit-Sector.cfm>.)

1 16. IRS Form 990, "Return of Organization Exempt from Income Tax," is used to
2 assist the IRS in enforcement of the rules governing the tax-free status that is granted to NPOs.
3 Among other information, a Form 990 details a NPO's revenues and expenses, assets and
4 liabilities, and additional information including compensation paid to executives, unrelated
5 business income, whether the organization engages in lobbying activities, and the stated
6 accomplishments of the organization.

7 17. Form 990s are publicly filed documents available for public inspection. The Form
8 990 is directly analogous to EDGAR filings required to be made by publicly traded corporations
9 by the SEC. In both cases, the information is collected by the government and is meant to be
10 released as a way of making our markets more efficient and more transparent.

11 18. The Form 990 is used by the IRS for enforcement efforts, but it is widely acknow-
12 ledged that oversight for this vital sector of the economy requires the participation of the public.
13 The U.S. Government Accountability Office ("GAO") has stated that "while strong governance
14 practices can help ensure that tax-exempt entities operate effectively and with integrity, public
15 availability of key information about the entities – *i.e.*, transparency – can both enhance incentives
16 for ethical and effective operations and support public oversight of tax-exempt entities, while
17 helping to achieve and maintain public trust. Recognizing the importance of transparency for tax-
18 exempt entities, Congress provided for substantial transparency regarding tax-exempt entities by
19 making their Forms 990 publicly available documents, in stark contrast to the strong protections
20 for the privacy of individuals' tax returns." (U.S. Government Accountability Office,
21 Governance, Transparency, and Oversight Are Critical for Maintaining Public Trust, GAO-05-
22 561T, April 20, 2005, p. 12, <http://www.gao.gov/products/GAO-05-561T>.)

23 19. In another study, GAO stated, "Oversight relies on the public (including donors,
24 organizations that oversee charities – referred to as 'watchdogs' – and the media), the Internal
25 Revenue Service (IRS), and states. This combined oversight not only checks compliance with
26 relevant laws, but also guides the public's decisions about donations and stems abuses by
27 charities." (U.S. Government Accountability Office, "Improvements Possible in Public, IRS, and
28

1 State Oversight of Charities,” GAO-02-526, April 30, 2002, p. 1,
2 <http://www.gao.gov/products/GAO-02-526>.)

3 20. In keeping with this theme of transparency, Internal Revenue Manual 3.20.12.1,
4 paragraph 12, states, “The intent of Congress in allowing for the public inspection of information
5 governed by [provisions governing public inspection of nonprofit applications and returns in] IRC
6 § 6104(a), IRC § 6104(b), and IRC § 6104(d), was to enable the public to scrutinize the activities
7 of tax exempt organizations and trusts. Congress intended that these organizations and trusts be
8 subject to a certain degree of public accountability in view of their privileged tax status and be-
9 cause the public has a right to know for what purposes their contributions are being or will be
10 used.” (IRS, Overview of Public Inspection Under IRC Section 6104,
11 http://www.irs.gov/irm/part3/irm_03-020-012r.html.)

12 ***Electronic Filing and Storage of IRS Form 990s by NPOs, and Public.Records.Org’s***
13 ***Efforts to Promote Widespread Public Access***

14 21. The policy of Congress generally is to promote paperless filings. See Section
15 2001(a), IRS Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 727,
16 <http://www.gpo.gov/fdsys/pkg/PLAW-105publ206/pdf/PLAW-105publ206.pdf> (“It is the policy
17 of Congress that paperless filing should be the preferred and most convenient means of filing
18 Federal tax and information returns.”)

19 22. The IRS manual provides that NPOs are “required to file Form 990 Electronically
20 if it has \$10 million or more in total assets and also file at least 250 returns in a calendar year, (in-
21 cluding income, excise, employment tax, and information returns such as Forms W-2 and 1099).
22 Private foundations and non-exempt charitable trusts are required to file Forms 990-PF electroni-
23 cally regardless of their asset size, if they file at least 250 returns annually.” (IRS, Internal Reve-
24 nue Manual 4.75.30.2.1.3, Electronic Filing Requirement, http://www.irs.gov/irm/part4/irm_04-075-030.html and 26 C.F.R. § 301.6033-4(a).) Other NPOs are permitted, but not required, to file
25 in electronic format.

26 23. The IRS’s Modernized e-File (“MeF”) format is a “web-based system that allows
27 electronic filing of corporate, individual, partnership, exempt organization and excise tax returns
28

1 through the Internet. MeF uses the widely accepted Extensible Markup Language (XML) format.
2 This is an industry standard that is used when identifying, storing and transmitting data rather than
3 the proprietary data transmission formats used by older e-file programs.” (IRS, “Modernized e-
4 File (MeF) Overview,” Page last updated June 3, 2013, [http://www.irs.gov/uac/Modernized-e-
5 File-%28MeF%29-Overview](http://www.irs.gov/uac/Modernized-e-File-%28MeF%29-Overview).)

6 24. The MeF format for records is an exact equivalent to paper format records. MeF
7 records are accepted electronically, are validated, and then are processed exactly as are paper re-
8 turns. As the IRS states: “Returns that successfully pass validation are considered ‘Accepted’ and
9 forwarded for additional processing to the IRS systems used to process paper returns. 100% of the
10 electronic return data is also stored in an official IRS repository and may be viewed by authorized
11 IRS employees using XML stylesheets.” (IRS, “Modernized e-File (MeF) Overview,” Page last
12 updated June 3, 2013, <http://www.irs.gov/uac/Modernized-e-File-%28MeF%29-Overview>.)

13 25. As part of a monthly service, the IRS sells to the public, for a fee, filings that it
14 receives from NPOs, including their Form 990s.

15 26. In 2007, Public.Resource.Org began a program to make Form 990 filings of exempt
16 organizations more accessible to the public. Since then, Public.Resource.Org has obtained and
17 processed 98.7 pounds worth of DVDs from the IRS. The IRS DVDs contain Form 990s in TIFF
18 image file format, regardless whether or not a nonprofit organization filed its 990 in electronic
19 form or paper form. Public.Resource.Org is informed and believes that this is the current method
20 that the IRS uses to make Form 990 information available in bulk.

21 27. Because Form 990s are received in TIFF format, it means the Form 990 files are
22 in an image format that is the same as a low-resolution photograph. (Library of Congress, TIFF,
23 Revision 6.0, April 4, 2013, <http://www.digitalpreservation.gov/formats/fdd/fdd000022.shtml>.)
24 Because it is low-resolution (in this case, 200 dots per inch), translating the files into machine-
25 readable format using Optical Character Recognition is very difficult. As a result of the conver-
26 sion to TIFF, it is no longer possible – as it would be with the native MeF data – to have a
27 computer scan the text and extract information systematically. Instead, human interaction
28 is required to gather data from each return.

1 28. In 2013, the cost to Public.Resource.Org for IRS Form 990 information, which
2 includes Forms 990T, 99EO, and 990PF, was \$2,580 per year. To date, Public.Resource.Org has
3 spent \$16,137 on these IRS products. Public.Resource.Org attempted to obtain a waiver of these
4 fees from the IRS, but the IRS refused to grant a waiver.

5 29. In addition, Public.Resource.Org received a gift of 52.3 pounds of Form 990 DVDs
6 from Mr. Jonathan Greenblatt, Director of Social Innovation & Civic Participation, Domestic
7 Policy Council, Executive Office of the President, after Public.Resource.Org was unable to obtain
8 the fee waiver.

9 30. To date, Public.Resource.Org has processed 6,905,384 files from the IRS,
10 converted them into more useful Portable Document Format ("PDF") files, and made this
11 information publicly accessible – for free – through the Public.Resource.Org website.
12 (<https://bulk.resource.org/irs.gov/eo/readme.html>.)

13 31. Public.Resource.Org makes IRS Form 990s available using the HTTPS, ftp, and
14 rsync protocols. The ftp and rsync protocols allow bulk access to the entire archive so that other
15 developers can quickly and easily replicate the information. The HTTPS protocol means that
16 access to individual returns is provided with a permanent Internet Address, so that other sites may
17 put in bookmarks to link to a return, and using the secure version of the HTTP protocol so that
18 users may have assurance that they are accessing the Public.Resource.Org computers, the same
19 way they know they are talking to their bank and not an imposter when they use HTTPS.

20 32. Public.Resource.Org employs an additional extensive set of procedures to post-
21 process the data received from the IRS to make it more usable. For example, the IRS distributes
22 returns as 1-page documents and Public.Resource.Org combines all the pages of an individual
23 return into a single PDF file.

24 33. In addition, the IRS has a policy that Social Security Numbers are not removed
25 from returns even though the documents are meant for public inspection. Public.Resource.Org
26 maintains a privacy registry which allows users to notify them if a Social Security Number is
27 found, at which point that information is redacted from the documents. Public.Resource.Org and
28

1 another nonprofit information service, GuideStar, also maintain a privacy clearinghouse and notify
2 each other of any privacy notifications received.

3 34. On November 1, 2012, Public.Resource.Org placed online a complete archive of all
4 Form 990s that have been made public from 2002 to the present. This web site included all the
5 documents, a privacy registry, open (copyright-free) source code used to process the documents,
6 and extensive information on the format of the current distribution and of the MeF e-file data
7 being sought in the current action.

8 35. This new Form 990 site included a Deed of Gift in which Public.Resource.Org
9 offered to make the entire system, including software and hardware, a gift to the government and
10 to assist in instructing government officials with the need or interest in doing so on how to use the
11 system. (See https://bulk.resource.org/irs.gov/eo/doc/deed_of_gift.html.) This offer also was con-
12 veyed by email to Mr. Jonathan Greenblatt, Director of Social Innovation & Civic Participation,
13 Domestic Policy Council, Executive Office of the President. In addition, the release was made
14 known to the public through the media. (See Boing Boing Blog, "Tax Returns for 6,461,236
15 tax-exempt organizations now indexable by search engines and available for free downloads,"
16 November 1, 2012, <http://boingboing.net/2012/11/01/tax-returns-for-6461326-tax.html>.)

17 ***Public.Records.Org Efforts to Make the IRS Form 990s More Publicly Accessible,***
18 ***Including Through Pursuing E-Filed Versions from the IRS***

19 36. As part of Public.Resource.Org's initiative to make nonprofit Form 990 tax filings
20 more publicly accessible, its president, Mr. Malamud, personally met with officials at the highest
21 levels of the federal government to solicit their support and insights.

22 37. For example, as the fall of 2012 approached, Mr. Malamud asked to meet with the
23 IRS to inquire why e-file data was not being released for NPOs' Form 990s. On September 17,
24 2012, Mr. Malamud, met with Lois Lerner, IRS Director of Exempt Organizations, and Joseph
25 Grant, IRS Acting Commissioner, Tax Exempt and Government Entities Division, at the IRS
26 offices at 999 North Capitol Street, NE, Washington, D.C. Ms. Lerner explained that the IRS
27 based its decision not to release e-file data on the fact that NPOs with less than \$10 million in
28 assets have the option of e-filing, but are not required to do so, and that if these nonprofits knew

1 their e-file data were to be released in a “more transparent” fashion, they would elect to file paper
2 copies instead to avoid the problem of “too much transparency.”

3 38. Undeterred, Public.Resource.Org pressed on. On November 9, Mr. Malamud
4 spoke by telephone with Todd Park, Chief Technology Officer for the President, and Raphael
5 Majma, a Presidential Innovation Fellow charged with investigating ways to “Open up
6 government data so that entrepreneurs can use it to create new tools that help citizens.” (See
7 <http://www.whitehouse.gov/innovationfellows>.) Based on that briefing, Mr. Malamud was
8 asked to fly to Washington two days later to meet with senior officials.

9 39. On November 13, Mr. Malamud attending a meeting that included Messrs. Park,
10 Majma, and Greenblatt; Steven VanRoekel, Federal Chief Information Officer for the Executive
11 Office of the President; Elizabeth Tucker, the IRS’s Deputy Commissioner for Operations Sup-
12 port; and Julie A. Rushin, the IRS’s Deputy Chief Information Officer. The meeting explored at
13 length the prospects for IRS release of e-file data, including NPOs’ electronically-filed Form 990s.
14 No technical obstacles were raised to release of the data, but IRS officials were worried that large
15 nonprofits would suddenly find their returns, as one official put it, “too transparent,” and would
16 complain because they had grown accustomed to the idea that their returns were only available as
17 bitmap images. Mr. Park and Ms. Tucker asked Mr. Malamud if Public.Resource.Org would be
18 able to help in any release and asked it to submit a letter detailing how the organization could
19 assist.

20 40. On November 17, 2012, Mr. Malamud prepared the requested proposal, which also
21 reiterated Public.Resource.Org’s program to make IRS Form 990s more publicly accessible, and
22 offered specific suggestions how the IRS could facilitate greater transparency and save taxpayer
23 money. A true and correct copy of this letter is attached as Exhibit A. On November 21, 2012,
24 Mr. Malamud received an email from Ms. Rushin in response stating “whenever the folks in
25 Treasury and IRS Counsel get the policy issues worked out – we are at the ready to move on this
26 so hopefully they can get it done.” A true and correct copy of this email is attached as Exhibit B.

27 41. On December 20, 2012, Mr. Malamud was asked to participate in a call with Kate
28 Miller, the IRS’s Associate Chief Information Officer, which would also include Ms. Rushin, Mr.

1 Park, Mr. Greenblatt, and Mr. Majma, in order to discuss technical issues related to the release of
 2 e-file data. During that teleconference, Ms. Rushin reaffirmed there were no technical obstacles to
 3 release of the data; only policy considerations were preventing release.

4 42. On February 7, 2013, Public.Resource.Org wrote a letter to Mr. Boris Bershteyn,
 5 Acting Administrator of OMB's Office of Information and Regulatory Affairs ("OIRA") detailing
 6 Public.Resource.Org's extensive efforts to make Form 990 information publicly accessible, and
 7 requesting that OIRA review the IRS's information dissemination policies regarding the disse-
 8 mination of Form 990s. In particular, the letter invited OIRA to scrutinize the IRS's insistence
 9 that disclosure of the e-filed data sought by Public.Resource.Org would provide "too much trans-
 10 parency" and would therefore discourage e-filing by those nonprofit organizations that have the
 11 option but are not currently required to e-file. A true and correct copy of this letter is attached as
 12 Exhibit C.

13 43. On April 14, 2013, Public.Resource.Org wrote to Ms. Tucker and Messrs. Park,
 14 VanRoekel and Greenblatt and summarized the public benefit of making IRS Form 990s available
 15 in machine readable format:

- 16 ■ The Department of the Treasury has stated that release of the e-file data will help
 17 "researchers, analysts, and entrepreneurs to understand the tax-exempt sector better and
 18 to create information tools and services to meet the needs of the sector." (Department
 19 of the Treasury, General Explanations of the Administration's Fiscal Year 2014
 20 Revenue Proposals, P. 174, April, 2013, [http://www.treasury.gov/resource-center/tax-](http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2014.pdf)
 21 [policy/Documents/General-Explanations-FY2014.pdf](http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2014.pdf).)
- 22 ■ Professor Beth Simone Novek, a leading expert on open government and a former
 23 senior White House official in charge of the President's open government policies,
 24 stated in the report, "Information for Impact: Liberating Nonprofit Sector Data," that
 25 release of the e-filed data would help state and federal authorities detect fraud and still
 26 spur innovation in the nonprofit sector. (Beth Simone Noveck and Daniel L. Goroff,
 27 Information for Impact: Liberating Nonprofit Sector Data, Aspen Institute, 2013,
 28

1 http://www.aspeninstitute.org/sites/default/files/content/docs/events/psi_Information-
 2 [for-Impact.pdf](http://www.aspeninstitute.org/sites/default/files/content/docs/events/psi_Information-for-Impact.pdf).)

- 3 ■ Five leading nonprofit foundations, including the Gates, Hewlett, Kellogg, Knight and
 4 Rockefeller Foundations and the Carnegie Corporation, have called on the IRS to make
 5 the e-filed Form 990 – including their own returns – available as machine-processable
 6 data. (Remarks of Darrin McKeever, Deputy Director, Gates Foundation at “Big
 7 Data and the Nonprofit Sector, Aspen Institute, January 31, 2013,
 8 <http://www.aspeninstitute.org/about/blog/big-data-nonprofit-sector>.)

- 9 ■ Application developers all over the country have stated that if this information is
 10 accessible, they would quickly produce a new generation of applications in record time.
 11 Those developers include all of the established players in the sector such as GuideStar,
 12 as well as some of the most innovative technology companies in Silicon Valley, non-
 13 profit think tanks, and journalists. (See Tom Lee, “Nonprofit E-File Data Should Be
 14 Open,” Sunlight Foundation, April 26, 2013,
 15 <http://sunlightfoundation.com/blog/2013/04/26/nonprofit-e-file-data-should-be-open/>;
 16 Andrea Peterson, “How the IRS Could Make It Easier to Track Dark Money, Right
 17 Now,” Think Progress, May 15, 2013,
 18 <http://thinkprogress.org/economy/2013/05/15/1978891/irs-dark-money/>; Beth Simone
 19 Noveck, “IRS: Turn Over a New Leaf, Open Up Data,” Forbes, May 21, 2013,
 20 [http://www.forbes.com/sites/bethsimonenoveck/2013/05/21/irs-turn-over-a-new-leaf-](http://www.forbes.com/sites/bethsimonenoveck/2013/05/21/irs-turn-over-a-new-leaf-open-up-data/)
 21 [open-up-data/](http://www.forbes.com/sites/bethsimonenoveck/2013/05/21/irs-turn-over-a-new-leaf-open-up-data/).)

22 A true and correct copy of this letter is attached as Exhibit D.

23 44. On April 19, 2013, Ms. Tucker responded to the various letters on which she had
 24 been copied and/or had received. Ms. Tucker noted that organizations within the federal govern-
 25 ment “have been collaborating to determine what progress can be made in this area.” Ms. Tucker
 26 also referred Mr. Malamud to the Obama Administration’s Fiscal Year 2014 Revenue Proposals
 27 that would mandate electronic filing for all tax-exempt organizations and require the IRS to make
 28

1 the electronically filed data publicly available in machine readable format. A true and correct
2 copy of this letter is attached as Exhibit E.

3 ***Public.Resource.Org's FOIA Request for IRS Form 990s in MeF Format***

4 45. As part of these efforts to make IRS Form 990s more publicly accessible, on March
5 11, 2013, Public.Resource.Org filed a FOIA request with the IRS for the electronically filed Form
6 990s for nine tax-exempt charitable organizations (the "FOIA Request"). The FOIA Request
7 made explicit that Public.Resource.Org was "specifically requesting the records be provided in
8 a Modernized e-File ("MeF") format. The formats specified on the Form 4506-A ('raw' or
9 'alchemy' format) will NOT satisfy this request." The FOIA Request noted that "the nine
10 specified Form 990s being requested are filed electronically in MeF format and we are specifically
11 requesting machine-readable data in the MeF format," and explained that "any other machine-
12 readable format, such as CSV (comma separated value)" would not be responsive to the FOIA
13 request. A true and correct copy of the FOIA Request is attached as Exhibit F.

14 46. On March 19, 2013, Bertrand Tzeng, a Disclosure Manager at the Headquarters of
15 the Department of the Treasury's Disclosure Program Operations, responded to the FOIA Request
16 by stating that requests for Form 990 records "can be processed routinely in accordance with the
17 established procedures" maintained by the IRS, and as such, the IRS deemed the MeF-formatted
18 Form 990s sought by Public.Resource.Org's FOIA Request as "excluded from disclosure in
19 response to a FOIA request." Mr. Tzeng instructed Public.Resource.Org to use IRS Form 4506-A,
20 "Request for Public Inspection or Copy of Exempt or Political Organization IRS Form." A true
21 and correct copy of Mr. Tzeng's letter is attached as Exhibit G.

22 47. On April 12, 2013, counsel for Public.Resource.Org filed a letter asking the
23 IRS to reconsider the position set forth in Mr. Tzeng's March 19, 2013, letter and its denial of
24 Public.Resource.Org's FOIA Request. Counsel explained that IRS Form 4506-A is inadequate to
25 satisfy Public.Resource.Org's FOIA Request because it only provides for releases of Form 990
26 data in raw or alchemy format. Counsel further explained how the IRS's practice of reformatting
27 Form 990 data from MeF – which is how the forms are originally filed with the agency – to a
28

1 TIFF image file is not only wasteful, but actually destroys valuable public information contained
2 in the forms.

3 48. The reconsideration request from counsel also pointed out that the IRS is presently
4 considering a proposal to require all tax-exempt organizations that file Form 990 returns to do
5 so electronically, and that if enacted, the new rule would also require the IRS to make the returns
6 publicly accessible in a machine readable format. Counsel concluded by asking the IRS to recon-
7 sider its position and to make all 990 forms that are filed in machine-readable format available to
8 the public in that format. A true and correct copy of counsel's reconsideration request is attached
9 as Exhibit H.

10 49. On May 1, 2013, Mr. Tzeng responded to the reconsideration request by claiming
11 that "Form 990 data in the MeF format do not constitute a recognizable record, but rather a conti-
12 nuous string of numbers that includes confidential return information. Our existing process for
13 providing releasable copies of Form 990 is to convert the MeF data into a PDF format and with-
14 hold confidential return information from the resulting form." The IRS, Mr. Tzeng continued,
15 "does not have an existing process to convert the releasable portion of Form 990 back into MeF
16 (or other machine readable) format. For these reasons, we are unable to provide the requested
17 records in MeF format because they are not readily reproducible in a form that also complies
18 with IRC section 6103(c)." A true and correct copy of this letter is attached as Exhibit I.

19 50. Mr. Tzeng's denial of Public.Resource.Org's FOIA request for MeF-formatted
20 (or other machine-readable) IRS Form 990s was incorrect in stating that the records contain confi-
21 dential information and therefore cannot be released to the public. All Form 990s as submitted go
22 through extensive processing when submitted, as detailed in the Internal Revenue Manual.
23 Internal Revenue Manual, Part 3, Chapter 11, Section 12, Submission Processing -- Returns and
24 Documents Analysis -- Exempt Organization Returns. ([http://www.irs.gov/irm/part3/irm_03-011-](http://www.irs.gov/irm/part3/irm_03-011-012r.html)
25 [012r.html](http://www.irs.gov/irm/part3/irm_03-011-012r.html).) All returns, including MeF and paper returns, have certain information removed,
26 such as the removal of Schedule B, except in the case of those filing a Form 990-PF. These
27 requirements are stated in IRM 3.20.12.2, Disclosure to the Public, lasted updated 1-1-2013.
28 (http://www.irs.gov/irm/part3/irm_03-020-012r.html).

51. Public.Resource.Org made its last attempts to clarify matters for the IRS in hopes of having its FOIA Request processed. By letter of May 9, 2013, it explained that Mr. Tzeng's letters effectively denied the FOIA Request, and/or refused to process it, on the mistaken ground that non-machine readable Form 990s routinely obtainable through IRS Form 4506-A are the same as Form 990 MeF filings that the IRS receives from NPOs and that Public.Resource.Org requested. The letter also explained why the MeF-formatted Form 990s are subject to FOIA and are required to be released under the law. Public.Resource.Org thus requested that the IRS and OMB both review their policies, and the policy applied to Public.Resource.Org's FOIA Request in particular, for conformance to law and to the President's Open Data Policy. A true and correct copy of this letter is attached as Exhibit J.

52. On May 10, 2013, Public.Resource.Org appealed to IRS Secretary Jacob J. Lew to make IRS Form 990s filed by NPOs available to the public as machine-readable data, and brought his attention to the requirement in the Open Data Policy that agencies should be "prioritizing those [databases] that have already been released to the public or otherwise deemed high-value or high-demand." (Office of Management and Budget, "Memorandum for the Heads of Executive Departments and Agencies," M-13-13, May 9, 2013, <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf>.) A true and correct copy of this letter is attached as Exhibit K.

FIRST CAUSE OF ACTION

(APA VIOLATION)

53. Public.Resource.Org realleges the allegations contained in paragraphs 1 through 52 above, inclusive.

54. The IRS's determination that IRS Form 990s filed electronically by NPOs and received and maintained by the IRS in MeF format is not an agency "record" under FOIA, and/or that they are identical to non-machine-readable versions of Form 990s that IRS treats as routinely available documents not subject to FOIA, is arbitrary and capricious and inconsistent with law in violation 5 U.S.C. § 706(2)(A).

64. The Freedom of Information Act, 5 U.S.C. § 552(a)(3)(B), requires that a federal agency “shall provide the record in any form or format requested by the person if the record is easily reproducible by the agency in that form or format.” The IRS Form 990s that are the subject of Public.Resource.Org’s FOIA request are easily reproducible in machine-readable format, the same format in which they were originally filed with the IRS, and the format requested by Public.Resource.Org.

65. Public.Resource.Org has a legal right under FOIA to obtain the agency records in the format it has repeatedly requested and made through its FOIA Request, which will further the public’s ability to meaningfully access this publicly filed tax information, and there exists no legal basis for the IRS’s consistent refusal to make these records available in the form or format that Public.Resource.Org has requested.

66. The IRS’s failure and repeated refusal to make available promptly the records in the format requested by Public.Resource.Org violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(ii), and applicable regulations promulgated thereunder.

67. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual controversy exists regarding the IRS’s refusal to produce these records in the format in which the Form 990s were originally filed with the agency. An actual controversy exists because Public.Resource.org contends that the IRS’s continuing failure to release the requested Form 990s is in violation of FOIA and the IRS contends otherwise.

68. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) to enjoin the IRS from improperly withholding agency records, and to order the production of any records improperly withheld.

PRAYER FOR RELIEF

WHEREFORE, Public.Resource.Org requests that judgment be entered in its favor against the IRS and that the Court:

a. Declare under the APA that the IRS’s policy that MeF-formatted IRS Form 990s that it receives and maintains in MeF or other machine-readable form are not agency records subject to FOIA is arbitrary, capricious, and not in accordance with law.

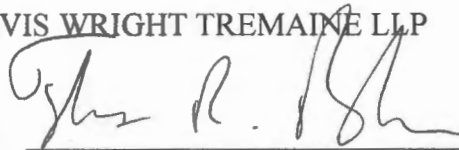
- b. Permanently enjoin the IRS from refusing to produce Form 990 records in a machine-processable format in response to future FOIA requests for this information;
- c. Declare under FOIA that the IRS's failure and refusal to produce the requested Form 990 records in a machine-processable format sought by Public.Resource.Org violates FOIA;
- d. Enjoin the IRS from withholding the MeF-formatted (or otherwise machine-readable) Form 990s for the nine NPOs that Public.Resource.Org requested through its FOIA request, and order the IRS to make those records available to Public.Resource.Org in MeF or other machine-processable format within 15 days of the Court's decision in this matter.
- e. Award Public.Resource.Org its reasonable attorney's fees and costs; and
- f. Grant such other relief as the Court may deem just and proper.

DATED this 18th day of June, 2013.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By:



THOMAS R. BURKE

Attorneys for Plaintiff Public.Resource.Org

EXHIBIT A



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

November 17, 2012

Ms. Elizabeth Tucker
Deputy Commissioner for Operations Support
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20004

Dear Ms. Tucker:

I am writing to you today to inform you of a program that Public.Resource.Org has undertaken to make Form 990 filings of exempt organizations more readily available to the public. Public.Resource.Org is a 501(c)(3) exempt organization, founded in 2007 and chartered in the State of California.

As part of our mission of making government information available, we have procured, with the assistance of the Executive Office of the President and through purchase, 98 pounds of DVDs, consisting of monthly shipments starting in 2002. This is the current method that the IRS uses to make this information available in bulk. The cost for the 2012 feed of this information, which includes Forms 990T, 990EO, and 990PF, is \$2,580 per year.

We have processed this information and it is now available on the Internet as a set of 6,461,326 PDF files. The PDF files include metadata in the XMP headers, a document ID, and a SHA-256 digital signature. We make the data available using the https, ftp, and rsync protocols. To deal with potential privacy issues, we asked both the IRS and GuideStar for help in identifying known privacy problems and have additionally put a header on each document informing the public how to report privacy issues.

Our current system is only the first step. To be truly useful, the Form 990 needs to be available as machine-readable data instead of the current distribution mechanism of bitmap images. GuideStar, the IRS, and other organizations all spend considerable amounts of money paying contractors to extract data from the bitmap images for purposes of analysis and enforcement.

Public.Resource.Org has undertaken a program to extract data from a large number of forms. We have begun with a pilot extraction program that is encoding all data on the first two pages of the Form 990T. We expect to have this pilot phase completed soon for 74,191 such forms. Upon completion of the pilot phase, we will continue data extraction for Exempt Organizations and Private Foundations for the period starting 2008 until the present time. Our goal is that by the end of 2013, there will be a fairly complete corpus of machine-readable data for the nonprofit sector.

We believe that this data extraction will be useful to the IRS, helping you save money on data extraction efforts and to do a more complete job of analysis and enforcement. In addition, our hope is to enable a new generation of applications that are created by

Ms. Tucker, Internal Revenue Service, Page 2

both for-profit and non-profit organizations. For example, we hope that search engines will begin to incorporate Form 990 information in their search results and that nonprofit guides such as Charity Navigator and GuideStar are able to make use of this information. We also believe a new generation of innovative applications will become available and we will expend considerable energy briefing developers on this new source of data and how they can incorporate it into new "apps."

We are hoping that there are two items on which Public.Resource.Org could cooperate with the IRS. First, we would be happy to make available to you any data we extract from the forms and would also be more than happy to brief your technical staff on our program.

The second item is access to Modernized e-File (MEF) format data, which is currently submitted by large organizations as part of mandatory e-filing and optionally by smaller organizations. We understand the potential tax policy issues of selectively making available MEF format data for a class of filers but not making similar machine-readable information available for all filers.

However, since our program will be making machine-readable data available for all filers, it is our hope that the IRS could make MEF data available to us, thus alleviating the need to re-key those returns. Re-entering data that has already been electronically filed is certainly a waste of resources and working directly with the MEF returns would ensure higher quality data, paving the way to eventual expansion of the e-filing program.

Public.Resource.Org has a policy of making all of our information available in bulk to all with no restrictions on use. As such, if you made MEF-format data available to us, we would commit to making sure that information immediately reached all other organizations that have use for this information, including current players such as GuideStar, as well as attracting new developers.

Please let me know if you have any questions about this proposal. I believe this could be simple to execute with a simple memorandum of understanding. I also believe that technically, transfer of MEF-format data would be quite simple for the IRS. Finally, if our program is successful, considerable cost savings would accrue to the IRS because of reduced data entry costs.

Sincerely yours,

Carl Malamud

cc: Mr. Todd Park, Chief Technology Officer, Executive Office of the President
Mr. Jonathan Greenblatt, Director of Social Innovation & Civic Participation
Mr. Steven Van Roekel, Chief Information Officer, Executive Office of the President

EXHIBIT B

Rushin Julie A <Julie.A.Rushin@irs.gov>
To: Carl Malamud <carl@media.org>
RE: Follow-Ups on the Forms 990

November 21, 2012 3:24 AM

Hi Carl,

Whenever the folks in Treasury and IRS Counsel get the policy issues worked out – we are at the ready to move on this so hopefully they can get it done.

Happy Thanksgiving! I am off the next few days but will be monitoring email.

Julie

-----Original Message-----

From: Carl Malamud [carl@media.org]

Sent: Saturday, November 17, 2012 12:16 PM Central Standard Time

To: Greenblatt, Jonathan

Cc: Flax Nikole C; Majma, Raph; Park, Todd; Tucker Beth; Rushin Julie A; Farmer, John; Sinai, Nick; Graubard, Vivian; VanRoekel, Steven; Henning Gloria G

Subject: Re: Follow-Ups on the Forms 990

Hi -

Sorry I'm a day late on this ... I spent all day Friday talking to foundations and to groups like GuideStar, Aspen Institute, Markets for Good, and others who are active in this space. All that talking made it hard to write.

Attached is a simple 2-page request for data to the IRS. I believe this could be an MOU by simply sending me a letter back. I kept it as a letter of request so there is no doubt that this is an unsolicited request from me and not some policy decision that the IRS has already made. The key elements are:

1. Public.Resource.Org would make data available to all without any restrictions.
2. Public.Resource.Org is doing data extraction on paper scans, a service which would be quite useful to the IRS and to others.
3. The IRS, under this proposal, would make the MEF data available so we don't have to do unnecessary extraction.

I'm still hopeful that we could reach a separate short-term agreement for release of mandatory e-file data. That is by far the simplest thing we could do and I believe would have a huge immediate impact. It is a relatively small number of filers but they represent the preponderance of assets and the most complicated returns.

Best regards,

Carl

EXHIBIT C



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

February 7, 2013

Mr. Boris Bershteyn, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Acting Administrator Bershteyn:

I am writing to you today on the subject of release on the Internet of nonprofit data collected by the IRS with the Form 990. My previous letters on this subject to the IRS on November 1, November 17, and January 4 have remained unanswered. I am writing to you because I believe current IRS policies violate longstanding laws, circulars, and directives mandating the distribution of electronic information.

Nonprofit corporations with \$10 million in assets and 250 filings per year are required to file electronically using the Modernized e-File (MeF) program. Other nonprofit corporations have the option of filing electronically. Many nonprofits still file paper returns.

The IRS releases Form 990 information as a monthly DVD subscription costing approximately \$2500/year. Each DVD contains 60,000 1-page TIFF images. Our December release of data consisted of 39 DVDs. For data received via the MeF program, the data is imaged onto a form and released as a TIFF image with the scans.

As you know, OMB Circular No. A-130 applies to the information activities of all agencies of the executive branch of the Federal government. Under the Circular, agencies are required to disseminate information on "equitable and timely terms" and are required to "avoid improperly restrictive practices." President Obama's Directive M10-06 on Open Government further asserts that agencies should "take prompt steps to expand access to information by making it available online in open formats."

These policy statements reflect and expand upon longstanding Congressional policy. The E-Government Act of 2002 was passed to "promote use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government" and to "promote access to high quality Government information." The Internal Revenue Code and Internal Revenue Regulations (26 USC and 26 CFR) are very specific that annual returns of nonprofits "shall be made available to the public."

We are requesting by this letter that OIRA review the IRS information dissemination policies with respect to 2 violations of OMB Circular A-130 and applicable statutes and regulations:

Acting Administrator Bershteyn, Page 2

- The IRS distributes a monthly feed of DVDs for \$2500 per year. This process is costly for the IRS to produce the DVDs and even more costly for the limited number of subscribers to the bulk feed to process. Significantly lower costs for the IRS and significantly broader reach for potential consumers of the bulk feed could be achieved by using an FTP server or a commercial service such as Dropbox.
- The IRS refuses to release the e-File data except as an image. This vastly decreases the utility of this information and is contrary to long-standing information dissemination policies. Our conversations with senior technical personnel at the IRS indicate that release of the e-file data is a trivial technical task and the only standing in the way is policy.

The policy consideration that was advanced in support of refuse to release is that disclosure of the e-file data would be "too much transparency" and would therefore discourage e-filing by those that have the option but are not required to do so under current regulations. There is no empirical evidence to support the reduced e-filing conjecture and clear statements from many large foundations that are required to e-file, such as the Gates Foundation, is that they would welcome the release of this information in a machine-readable format.

The courts have been clear that the government is not required to "invest in the most sophisticated and expensive form of technology" when considering requests for release of data in a particular format. (*Martin & Merrell, Inc. v. United States Customs Service*, 657 F. Supp. 733, 734 (S.D. Fla. 1986)) However, longstanding federal policy has been equally clear that agencies should not impose "unnecessary bureaucratic hurdles" on the release of data. (Memorandum of President Clinton, October 4, 1993).

Release of Form 990 data is no different than release of data collected by the Securities and Exchange Commission under their EDGAR program. In both cases, public disclosure of information is meant to make our markets more transparent and efficient and to make enforcement more effective. Refusing to release e-file data is a clear violation of the President's Open Government Directive and has a clear and immediate negative effect on the functioning of our nonprofit sector, one of the most important segments of our economy.

I am hopeful that OIRA will review this situation and require a more thorough investigation as to why this public information is not being released. I am also hopeful that OIRA will see fit to respond to our letter, as we have expended significant time and energy in making available to the public 6,749,562 tax returns and feel that the least the government can do is take the time to answer a reasonable request.

Best regards,

Carl Malamud
Public.Resource.Org

EXHIBIT D



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

To: Ms. Elizabeth Tucker, Deputy Commissioner of the Internal Revenue Service
Mr. Todd Park, Assistant to the President and Chief Technology Officer
Mr. Steven VanRoekel, Assistant to the President and Chief Information Officer
Mr. Jonathan Greenblatt, Assistant to the President and Director of Innovation
Cc: Mr. Thomas R. Burke, Davis Wright Tremaine, Representing Public.Resource.Org
Mr. David Halperin, Of Counsel, Representing Public.Resource.Org
Mr. Mark Rumold, Electronic Frontier Foundation, Representing Serious Givers
Ms. Cindy Cohn, Electronic Frontier Foundation, Representing Serious Givers
Ms. Kathy Kiely, Managing Editor, the Sunlight Foundation
Mr. Michael Morisy, Chief FOIA Officer, Muck Rock
From: Carl Malamud, Public.Resource.Org
Date: April 14, 2013
Subj: Refusal to Release E-File Data for Nonprofit Corporations

As you know, Public.Resource.Org has expended considerable effort to try to make the Form 990, the Public Reports of Nonprofit Corporations, more broadly available on the Internet. We've posted 6,821,105 PDF files, including all publicly released documents from 2002 to the present. Although all large nonprofits are required to e-file their returns, and many smaller nonprofits elect to do so, the IRS has not released the machine-processable e-file information, and has chosen instead to image the data onto forms and release the information as bitmap images, equivalent to a scan of a paper document.

The nonprofit sector is a key part of the United States economy. The Urban Institute reports 1.5 million tax exempt organizations with 2009 revenues of \$1.87 trillion and \$4.3 trillion in assets. Nonprofits account for 9.2% of all wages and salaries paid in the United States. The purpose of the Form 990 is to assist the I.R.S. in enforcement of the rules governing the special status granted to nonprofits. The Form 990 is meant to make this vital sector more efficient by directing donor funds to the nonprofits that most effectively use them. The Form 990 is directly analogous to the EDGAR filings required for public corporations by the Securities and Exchange Commission: both of these public filings are meant to be disclosed in order to make our markets more efficient and more transparent.

Unfortunately, the IRS and the White House have refused to release e-file data, which has been collected since 2008. This means that a raft of innovative applications have simply not happened because the machine-processable information has not been released. Despite repeated attempts to raise the issue with you, including repeated offers to assist the government in making this information available, none of our letters to the IRS, the Office of Science and Technology Policy, or the Office of Management Budget have been answered. We've suggested ways to save money in distribution of the current DVDs, we've offered to help in distribution of the e-file data, we've even offered to donate the entire system used to distribute PDF files.

In an attempt to use existing administrative procedures, several groups have filed FOIA requests for e-file data. These groups, including Public.Resource.Org, the Sunlight Foundation, Serious Givers, and Muck Rock, have each asked for the returns of specific organiza-

tions relevant to their missions. In each case, there is a compelling public interest in the release of this information in electronic format. The returns of large nonprofits are long and complex, and release of the e-file data allows analysis and processing that is simply impossible with the current release of bitmap images.

Unfortunately, the IRS has chosen not to treat the FOIA requests seriously. Our requests have been turned down and we have been directed to fill out the Form 4506-A, which as we all know, is simply a way to obtain one of the current bitmap files. The requests are totally non-responsive, and we have thus reluctantly been forced to secure representation. Public.Resource.Org is represented in this matter by Mr. Thomas R. Burke, a noted attorney with the firm of Davis Wright Tremaine, LLP. We are also represented by Mr. David Halperin, a leading authority on these matters and the founder of the American Constitution Society. Likewise, Serious Givers has secured representation from the Electronic Frontier Foundation. We are sorry to bring this matter to the brink of litigation as our hope has always been to work with the administration.

Release of the e-file data is universally recognized as being a way of making our nonprofit sector more responsive, more efficient, and more dynamic:

- The Department of the Treasury has stated that release of the e-file data will help "researchers, analysts, and entrepreneurs to understand the tax-exempt sector better and to create information tools and services to meet the needs of the sector."
- Professor Beth Noveck, a leading expert on open government and a former senior White House official, stated in the report "Information for Impact: Liberating Nonprofit Sector Data" that release of the e-file data would help state and federal authorities detect fraud and will spur innovation in the nonprofit sector.
- Five leading nonprofit foundations, including the Gates, Hewlett, Kellogg, Knight, and Rockefeller Foundations and the Carnegie Corporation, have called on the IRS to make the e-filed Form 990—including their own returns—available as machine-processable data.
- Application developers all over the country have stated that if this information is available, they would quickly produce a new generation of apps in record time. These developers include all the established players in the sector such as GuideStar, as well as some of the most innovative technology companies in Silicon Valley, leading nonprofit think tanks, and journalists.
- The Form 990 is specifically meant for public distribution and inspection. This is not a question of whether the data should be released, it is simply a question of releasing the data without dumbing it down. In our discussions with the Chief Information Officer of the IRS, it was explicitly stated that release of this information is a technical no-brainer. Few things in government are easy. This would be easy.

The nonprofit e-file data is a perfect example of the big data trend sweeping the nation. The administration is purposely holding back information that could help create jobs and reduce waste and fraud. This is not a technical issue, this is an economic issue.

You will find attached the letter from our attorneys to the IRS, along with my fervent hope that instead of wasting resources on litigation we can all work together to make our nonprofit sector better and more vibrant, that we can together take this simple step that will help make the United States a better place to live by encouraging and supporting our nonprofit sector.

April 12, 2013 Letter from
Public.Resource.Org.'s Counsel
to IRS omitted as duplicative of
Exhibit H

EXHIBIT E



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

April 19, 2013

Mr. Carl Malamud
Public Resource
1005 Gravenstein Highway North
Sebastopol, CA 95472
Dear Mr. Malamud:

I am writing in response to your letters to the Internal Revenue Service regarding the public release of Form 990 data and also in follow-up to the meetings and discussions you have had with IRS on this subject.

As we discussed in our meeting last November, the IRS supports the goal of public release of all Form 990 data in machine readable format, but has current limitations in making all data available in this way. I understand that you also have had meetings with both the Exempt Organizations and Information Technology organizations, as well as correspondence with our Research, Analysis and Statistics (RAS) organization on this topic. All of these organizations have been collaborating to determine what progress can be made in this area.

RAS has recently made publically available a financial data extract of numerous data fields of 2012 exempt organization Form 990 series filings. This information is available at <http://www.irs.gov/uac/SOI-Tax-Stats-Annual-Extract-of-Tax-Exempt-Organization-Financial-Data>.

In addition, the Administration's Fiscal Year 2014 Revenue Proposals include a legislative proposal that would mandate electronic filing for all tax-exempt organizations. Under the proposal, the IRS would be required to make the electronically filed data publicly available in machine readable format.

The IRS will also continue to consider whether additional steps can be taken in this area. Thank you for your interest in this issue.

Sincerely,

A handwritten signature in black ink that reads "Beth Tucker".

Beth Tucker
Deputy Commissioner for
Operations Support

EXHIBIT F



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

March 11, 2013

IRS FOIA Request
 HQ FOIA, Stop 211
 2385 Chamblee Tucker Road
 Chamblee, GA 30341
 Via Telefacsimile (770) 936-1898 and USPS

Dear IRS FOIA Team:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Internal Revenue Service ("IRS") by Public.Resource.Org, a tax-exempt organization dedicated to making government information more accessible.

We are seeking the disclosure of Form 990 data for nine tax-exempt charitable organizations. We are specifically requesting the records be provided in a Modernized e-File ("MeF") format. The formats specified on the Form 4506-A ("raw" or "alchemy" format) will NOT satisfy this request. All of the nine specified Form 990s being requested are filed electronically in MeF format and we are specifically requesting machine-readable data in the MeF format. We will consider any other machine-readable format, such as CSV (comma separated value) as being responsive to this request.

The organizations we are requesting release of machine-readable data from the Form 990 are:

EID	Year	Organization
52-0914827	2011	International Training Institute for the Sheet Metal and Air Conditioning Industry 8403 Arlington Blvd, No 310 Alexandria, VA 22031
36-2099048	2011	Sheet Metal and Air Conditioning Contractors' National Association 4201 Lafayette Center Drive Chantilly, VA 20151

EID	Year	Organization
36-3999004	2011	International Code Council, Inc. 500 New Jersey Avenue, NW, No. 600 Washington, DC 20001
13-1635253	2011	American National Standards Institute 25 West 43rd Street, 4th Floor New York, NY 10036
54-1787183	2011	The SMACNA Testing and Research Institute 4201 Lafayette Center Drive Chantilly, VA 20151
52-1538775	2011	SMACNA College of Fellows 4201 Lafayette Center Drive Chantilly, VA 20151 2011 Return
41-1998303	2011	New Horizons Foundation 4201 Lafayette Center Drive Chantilly, VA 20151
95-1953485	2011	Sheet Metal and Air Conditioning 12070 Telegraph Road, Suite 350 Santa Fe Springs, CA 90670
23-7315003	2011	National Stabilization Agreement of the Sheet Metal Industry Trust Fund 601 N. Fairfax Street, No. 400 Alexandria, VA 22314

The request does not seek the names or address of any organizations contributors or donors.

Again, the request is for the requested records in an MeF format and not the "raw" or "alchemy" formats provided through Form 4506-A. Under FOIA, an "agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." 5 U.S.C. § 552(a)(3)(B); 26 C.F.R. 601.702(c)(2). Thus, failure to produce the records in the requested MeF format will constitute a denial of our request.

Request for News Media Fee Status

I ask that Public.Resource.Org not be charged search or review fees for this request because our organization qualifies as a representative of the news media pursuant to the FOIA and 26. C.F.R. § 601.702(f)(3)(iv)(B).

Public.Resource.Org "actively gathers" information about "current events" concerning the public dissemination of the law. 26 C.F.R. § 601.702(f)(3)(ii)(B). In particular, Public.Resource.Org disseminates information to educate and inform the public about charitable giving in order to "Make Government Work Better." In particular, the organization makes available to the public periodic updates on IRS dissemination

policies and procedures and makes available to the public at no charge 6,782,054 Form 990 filings.

Our service is updated on a monthly basis and is considered an important source of information on the nonprofit and charitable sector, and was recognized as such in the recent report issued by the Aspen Institute Program on Philanthropy and Social Innovation entitled Information for Impact, Liberating Nonprofit Sector Data (January 2013) (See pages 27).

In addition, Public.Resource.Org has been classified as a member of the media and granted fee waivers from the U.S. Government for numerous publication activities. Such fee waiver and media status have been granted by the United States Congress (January 5, 2011) for purposes of making available video from congressional hearings. Such fee waiver and media status have been granted for purpose of FOIA requests by numerous executive branch agencies including the IRS (September 28, 2009), Department of Education (June 1, 2009), Food and Drug Administration (June 1, 2009), Department of Homeland Security Headquarters (June 9, 2009), and DHS Citizenship and Immigration Services (May 29, 2009).

Request for a Public Interest Fee Waiver

Public.Resource.Org is entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 26 C.F.R. § 601.702(f)(2). To determine whether a request meets this standard, the agency assesses whether "[d]isclosure of the requested information ... is likely to contribute significantly to public understanding of the operations or activities of the IRS," 26 C.F.R. § 601.702(f)(2) and whether the disclosure is "primarily in the commercial interest of the requester." *Id.* The request of Public.Resource.Org satisfies these criteria.

First, the Form 990 filings requested by Public.Resource.Org will shed light on the IRS's processing, handling, and treatment of tax-exempt organizations. IRS assessment of an organization's compliance with the laws and regulations governing tax-exempt organizations unquestionably concerns the "agency's operations or activities." 26 C.F.R. § 601.702(f)(2)(i)(A). For these same reasons, the release of the requested records will "contribute to an understanding" of the agency's operations and activities. 26 C.F.R. § 601.702(f)(2)(i)(B).

As described above, Public.Resource.Org will make the requested records available to the general public through our organization's website, which provides information to the general public about making effective charitable contributions. Because Public.Resource.Org will broadly disseminate the requested records, the information is thus "likely" to contribute to the public's understanding of agency operations. 26 C.F.R. § 601.702(f)(2)(i)(C).

Finally, because the requested records are currently available from the IRS only in image file formats, the provision of the requested records in MeF formats will likely contribute significantly to the public's understanding of agency operations. 26 C.F.R. § 601.702(f)(2)(i)(D). Provision of the records in a machine-readable format will allow Public.Resource.Org, and the general public, to manipulate the data in new ways, thus providing new and innovative avenues for assessing agency operations and activities.

Furthermore, a fee waiver is appropriate here because Public.Resource.Org has no commercial interest in the disclosure of the requested records. 26 C.F.R. § 601.702(f)(2)(i)(E)-(F). Public.Resource.Org is a 501(c)(3) organization and will derive no "commercial, trade, or profit interests" from the disclosure of the information at issue here. 26 C.F.R. § 601.702(f)(3)(ii)(B).

Willingness to Pay Fees

In the event that a fee waiver is denied, Public.Resource.Org is willing to pay fees for processing of this request.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (707) 827-7290 or carl@media.org. Please mail all responses to my attention at the above email address or via postal mail to Public.Resource.Org, 1005 Gravenstein Highway North, Sebastopol, CA 95472. As the FOIA provides, I will anticipate a determination on this request within 20 days.

Sincerely yours,

Carl Malamud
Public.Resource.Org

EXHIBIT G



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

March 19, 2013

Carl Malamud
Public.Resource.Org
1005 Gravenstein Highway North,
Sebastopol, CA 95472

Dear Mr. Malamud:

I am responding to your Freedom of Information Act (FOIA) request dated March 11, 2013, that we received on March 12, 2013.

You asked for Form 990 data for nine tax-exempt charitable organizations in a Modernized e-file (Mef) format. You specifically stated that data in "raw" or "alchemy" format would not satisfy your request.

The FOIA, at 5 U.S.C. § 552(a)(3)(A), and the Service's FOIA regulations, at 26 C.F.R. § 601.702(d)(1), state that requests for records that can be processed routinely in accordance with the established procedures are excluded from disclosure in response to a written FOIA request. We have a routine agency procedure that should be used to request Form 990. For your convenience, I am enclosing Form 4506-A for this purpose. Please submit Form 4506-A to the address provided in the enclosed instructions.

Please note that you should not receive data in "raw" or "alchemy" format in response to Form 4506-A since your request pertains to individual exempt organizations only. The "raw" and "alchemy" data formats apply to orders of complete or partials sets of Forms 990 (e.g. filed in a particular year) on CD.

If you have any questions please call Tax Law Specialist Denise Higley, ID #0142331, at 801-620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13071-0107.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bertrand Tzeng".

Bertrand Tzeng
Disclosure Manager
HQ FOIA and Disclosure Program Operations

Enclosure
Form 4506-A and Instructions

Form **4506-A**
(Rev. December 2011)
Department of the Treasury
Internal Revenue Service

Request for Public Inspection or Copy of Exempt or Political Organization IRS Form

OMB No. 1545-0495

▶ Type or print clearly. Request may be rejected if the form is incomplete or illegible.



TIP You may not have to complete Form 4506-A to get the copies you need.

- **Internet.** Form 8871, Political Organization Notice of Section 527 Status, and Form 8872, Political Organization Report of Contributions and Expenditures, are available for inspection and printing from the Internet. The website address for both forms is www.irs.gov/polorgs.
- **Public disclosure by the organization.** Exempt or political organizations must make their returns, reports, notices, and exempt applications available for public inspection. You can visit the organization to inspect the material instead of requesting it from the IRS. The organization may be able to mail the copies to you.

1 Exempt or political organization. If a multiple request, please attach list of names, forms, and tax years.

Name	Employer identification number
Address	
City or town, state, and ZIP code	

2 Requester

Name	Contact person
Address	Phone
City or town, state, and ZIP code	Date

3 Category of requester: ☐ Commercial user ☐ Non-commercial scientific institution ☐ Media ☐ Educational Institution ☐ All others ☐ Name of Media Outlet

4 Reason for request. All requesters except for commercial users must provide an explanation of how the records will be used to avoid being charged the commercial rate. Attach additional sheets if necessary.

Lines 5-9. For each applicable form, check the box(es) for the item(s) you are requesting. You may request more than one form. For each form requested, check either the copy, inspection, CD/DVD, or Sample CD/DVD box and enter the specific tax year(s), as indicated. If ordering a partial set on CD/DVD or Sample CD/DVD, indicate the format, state(s), and month(s) requested. **Note.** CD/DVD and Sample CD/DVD are not available for individual exempt organizations.

5 Form 990, Form 990-EZ:

a Paper request: ☐ Copy ☐ Inspection

Tax year(s) or period(s) requested: _____ ; _____ ; _____
YYYYMM YYYYMM YYYYMM

b CD/DVD request: ☐ CD/DVD ☐ Sample CD/DVD

Format: ☐ Alchemy ☐ Raw

State(s): _____ ; _____ ; _____

Calendar year(s): _____ ; _____ ; _____

6 Form 990-PF:

a Paper request: ☐ Copy ☐ Inspection

Tax year(s) or period(s) requested: _____ ; _____ ; _____
YYYYMM YYYYMM YYYYMM

b CD/DVD request: ☐ CD/DVD ☐ Sample CD/DVD

Format: ☐ Alchemy ☐ Raw

State(s): _____ ; _____ ; _____

Calendar year(s): _____ ; _____ ; _____

7 Form 990-T (501(c)(3) organizations filed after August 17, 2006):

a Paper request: ☐ Copy ☐ Inspection

Tax year(s) or period(s) requested: _____ ; _____ ; _____
YYYYMM YYYYMM YYYYMM

b CD/DVD request: ☐ CD/DVD ☐ Sample CD/DVD

Format: ☐ Alchemy ☐ Raw

State(s): _____ ; _____ ; _____

Calendar year(s): _____ ; _____ ; _____

8 Form 5227 (for tax years beginning after December 31, 2006):

Paper request: ☐ Copy ☐ Inspection

Tax year(s) or period(s) requested: _____ ; _____ ; _____
YYYYMM YYYYMM YYYYMM

9 ☐ Form 1023 ☐ Form 1024 ☐ Determination Letter
☐ Updated Determination Letter

IRS Use Only

The form requested above was inspected by (name of requester)

IRS office where inspection was made

Signature of employee present at inspection

Date

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 41722P

Form **4506-A** (Rev. 12-2011)

Instructions for Form 4506-A



Department of the Treasury
Internal Revenue Service

(Rev. December 2011)

Request for Public Inspection or Copy of Exempt or Political Organization IRS Form

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

- You can order sample CDs and/or DVDs of exempt organization returns.
- The IRS has created a page on IRS.gov for information about Form 4506-A and its instructions, at www.irs.gov/form4506. Information about any recent developments affecting Form 4506-A (such as legislation enacted after we release it) will be posted on that page.

General Instructions

Purpose of Form

Use Form 4506-A to request under section 6104:

- A copy of an exempt or political organization's return, report, notice, or exemption application, or
- An inspection of a return, report, notice, or exemption application at an IRS office.

You **do not** have to complete Form 4506-A to get copies of the following forms.

- Form 8871, Political Organization Notice of Section 527 Status, and Form 8872, Political Organization Report of Contributions and Expenditures, are available for inspection and printing from the Internet. The website address for both forms is www.irs.gov/polorgs.
- Exempt or political organizations must make their returns, reports, notices, and exempt applications available for public inspection. You can visit the organization to inspect the material instead of requesting it from the IRS. The organization may be able to mail the copies to you.
- You may request images of Form 990-N (e-Postcard) filings at www.irs.gov/app/ePostcard.



An organization, or its officers, may request a copy of the organization's own return on Form 4506-A. However, they will only receive the copy that is "Open for Public Inspection." The publicly available copy will not include, for example, information that may identify a contributor and documents that were filed with the return, but are not open to public inspection. An organization, or its officers, may request a complete copy of the organization's own return by completing Form 4506, Request for Copy of Tax Return, and paying the applicable fee.

CD and DVD

The IRS can provide copies of exempt organization returns on CD and/or DVD. Requesters can order the complete set (for example, all Forms 990 and 990-EZ or all Forms 990-PF filed for a year) or a partial set by state or by month. If you are ordering a partial set on CD or DVD, indicate the format (Alchemy or raw), state(s), and month(s) you are ordering. Sample CD or DVD requests are not available for individual states. CDs and/or DVDs and sample CDs and/or DVDs are not available for individual exempt organizations. Complete information, including the cost, is available on the IRS website.

Search Copies of Scanned EO Returns Available at www.irs.gov.

Formats

Alchemy. CDs and DVDs contain image files associated in an Alchemy database to simplify visual searching of the tax returns. All required Alchemy software is provided. This format is best for users who wish to examine returns visually. Individual state CDs and DVDs are only available in Alchemy format.

Raw. CDs and DVDs contain image files in Tag Image File (TIF) format for returns selected for the month or quarter requested. This format is best for users who intend to process the image files through their data software.

How Much Will It Cost?

You may inspect a return, report, notice, or exemption application at an IRS office free of charge.

If you want a photocopy of a return, report, notice, or an exemption application, see the chart below.

Note. The IRS will send you a bill for the photocopy cost. If your cost is over \$250, we will ask for payment in advance.

IF you are . . .	THEN the charge for paper copies is . . .
A commercial user	\$.20 per page
An educational institution, media, non-commercial scientific institution, or all other requesters	First 100 pages free, \$.20 per page thereafter

CD and/or DVD requests and sample CD and/or DVD requests must be prepaid. Please include your payment with your request. Search Copies of Scanned EO Returns Available at www.irs.gov for the cost of CDs and/or DVDs and sample CDs and/or DVDs. A check or money order for the fee should be payable to "United States Treasury."

Where To File

Use the following chart to determine where to fax or mail (depending on the service needed) Form 4506-A.

IF you want . . .	THEN file Form 4506-A with the . . .
To inspect a return, report, notice, or exemption application at an IRS office*	Internal Revenue Service Disclosure Scanning Operation - Stop 93A P.O. Box 621506, Atlanta, GA 30362-3006
To inspect a return, report, notice, or exemption application at IRS National Headquarters	Internal Revenue Service Attn.: Freedom of Information Reading Room 1111 Constitution Avenue NW Washington, DC 20224

A copy of an exemption application (includes all supporting documents)	Internal Revenue Service Attn: Correspondence Unit P.O. Box 2508, Room 4024 Cincinnati, OH 45201 Fax no. 513-263-3434
A copy of a return, report, or notice	Internal Revenue Service RAIVS Unit MS: 6716 Ogden, UT 84201 Fax no. 801-620-7896

*The office handling your request will contact you to schedule an appointment when the item is available for inspection.

How Long Will It Take?

It may take up to 60 calendar days for us to process your request.

Specific Instructions

Line 1

Exempt or political organization. Enter the organization's official name under which exempt status was approved, address, and employer identification number. If you do not enter the official name, we may not be able to locate the requested form.

Line 2

Requester. Enter the requester's name, address, phone number, and the name of a contact person.

Line 3

Category of requester. Check the appropriate category of the requester. You must check a box.

Line 4

Reason for request. To avoid being charged the commercial rate, all requesters except commercial users, must provide a reason for requesting the records and explain how the records will be used.

Lines 5-9

For each applicable form, check the box(es) for the item(s) you are requesting. You may request more than one form. For each form requested, check either the copy, inspection, CD/DVD, or sample CD/DVD box and enter the specific tax year(s) or period(s) as indicated. If ordering a partial set on CD/DVD or sample CD/DVD, indicate the format, state(s), and month(s) requested. If ordering a sample CD/DVD, check the sample CD/DVD box, indicate the format, and write in the calendar year(s). Sample CD and DVD requests are not available for individual states. Individual state CDs and DVDs are only available in Alchemy format.



Incomplete requests will be rejected.

Note. Tax returns are generally available only for 7 years from filing before they are destroyed in accordance with applicable provisions of law.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need the information to gain access to the return or other exempt or political organization IRS form you requested in our files and properly respond to your request.

The authority to ask for the information requested on this form is section 6104 and its regulations. You are not required to provide the information requested on this form. However, if you do not furnish the information, we may not be able to fulfil your request. Providing willfully false or fraudulent information may subject you to criminal penalties. Routine uses include disclosing the information to the Department of Justice for civil or criminal litigation. We may also disclose this information to federal and state agencies to enforce federal nontax criminal laws and to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. The time needed to complete and file Form 4506-A will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	6 min.
Learning about the law or the form	10 min.
Preparing the form	21 min.
Copying, assembling, and sending the form to the IRS ..	20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 4506-A simpler, we would be happy to hear from you. You can write to:

Internal Revenue Service
Tax Products Coordinating Committee
SE:W:CAR:MP:T:M:S
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Do not send Form 4506-A to this address. Instead, see *Where To File* on page 1.

EXHIBIT H



Thomas R. Burke
Suite 800
505 Montgomery Street
San Francisco, CA 94111-6533

Tel 415.276.6552
Fax 415.276.6599

Email: thomasburke@dwt.com

April 12, 2013

VIA EXPRESS MAIL

Internal Revenue Service
HQ Disclosure
2980 Brandywine Road, Stop 211
Chamblee, Georgia 30341

Re: Case No. F13071-0107

Dear Madam/Sir:

On behalf of our client, Public.Resource.Org, we write regarding the agency's March 19, 2013, letter in response to its President, Carl Malamud's March 11, 2013, FOIA request to the Internal Revenue Service ("IRS"). As you know, Mr. Malamud seeks the release of Form 990 data for nine tax-exempt organizations, specifically in Modernized e-File ("MeF") or another machine-readable format. Rather than release this public data in the format requested, the IRS directed Mr. Malamud to re-submit his request using a Form 4506-A.

As a threshold matter, the Form 4506-A is inadequate to convey Mr. Malamud's request because it only provides for the release of data in raw or alchemy format. Mr. Malamud specifically advised the IRS in his request that the Form 4506-A and those formats "will NOT satisfy this request." See March 11, 2013 Letter at 1.

By way of background, Mr. Malamud's organization, Public.Resource.Org, has been at the forefront of a movement to make reams of government data available to the public for free. Directly relevant here, his firm has processed 6,821,105 PDF files, consisting of Form 990 data from 2002 to the current release, and made it all publicly accessible on the Public.Resource.Org website. But that process is unnecessarily complex because of the way the IRS handles Form 990 data: Having collected it in MeF format, the agency processes the data to remove non-public information, and then reduces it to a bitmap image. Those images are loaded onto DVDs for public release.

Reformatting the data from MeF into an image is not only wasteful; it actually destroys information. It means, for example, that one can no longer quickly and easily extract data such as executive compensation information, figures having to do with expense or revenue breakdowns,

DWT 21665445v1 0085000-002314

Internal Revenue Service

Page 2

or whether an organization has given loans to officers or directors. The only options are to rekey the information, which is redundant and cumbersome to the point of being impossible with this volume of data, or have a human read the images.

Indeed, the IRS's current process undermines the value to the public in having the Form 990 information at all. As the Treasury Department itself realizes, machine-readable Form 990 data is more useable to "researchers, analysts, and entrepreneurs [looking] to understand the tax-exempt sector better and to create information tools and services to meet the needs of the sector." Department of the Treasury, General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals, at 174 (2013), *available at* <http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2014.pdf>. In other words, the purpose of making Form 990 data public is to enable outside scrutiny. Meaningful scrutiny is only feasible if the data is released in machine-readable format.

There can be no dispute that there exists, a strong public interest in the IRS granting Mr. Malamud's request. But frankly the Freedom of Information Act leaves the agency with no choice. As you know, FOIA provides that an agency "shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." 5 U.S.C. §552(a)(3)(B). Courts read this provision for its plain meaning: An agency need not create a whole new record, but it cannot decline a FOIA request "when it has the capability to readily reproduce documents in the requested format." *TPS, Inc. v. Dep't of Defense*, 330 F.3d 1191, 1195 (9th Cir. 2003). If the request specifies a format, and the agency has the "technical capability to create the records" in that format, *Sample v. Bureau of Prisons*, 466 F.3d 1086, 1088 (D.C. Cir. 2006), then the agency must do so. *See also Martinez v. Social Security Administration*, 2008 U.S. Dist. LEXIS 21703, at *6 (D. Colo. 2008) (relying in part on §552(a)(3)(B), and holding Plaintiff was entitled to both aggregate and individualized data).

A challenging situation might arise if a requester asked an agency to convert data into a new and unusual format. But this is not that case. Here, the IRS has the Form 990 data in MeF format because that is how the agency initially collects it from non-profit organizations. In a meeting that Mr. Malamud had with the Deputy Commissioner of the IRS and other officials, along with the Chief Technology Officer and Chief Information Officer in the Executive Office of the President, it was clearly stated that there are no technical obstacles to the release of this information. If anything, we are asking the agency to produce it in an *even more* "readily reproducible" format, by eliminating the extra step of converting the data to a bitmap image. Indeed, Mr. Malamud has submitted the rare FOIA request where compliance is required, and will, if followed on a large scale, help preserve precious agency resources.

Internal Revenue Service

Page 3

Clearly the government has taken all of this into account, given its new proposal that tax-exempt organizations that file Form 990 returns do so electronically. *See* Department of the Treasury, General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals, at 174. If enacted, the new rule would also require the IRS to make the returns "publicly available in a machine readable format[.]" *Id.* Yet, it could take at least three years for this new policy to take effect. In the meantime, there is great demand for the MeF information: Organizations involved in the dissemination of Form 990s, such as Public.Resource.Org and Guidestar, have stated publicly that it would be extremely useful and lead to much better analysis tools on Form 990 data by the public. The IRS has every policy reason to immediately grant – and no legal basis to deny – Mr. Malamud's FOIA request.

We strongly urge the IRS to reconsider its position by no later than May 10, 2013. If the agency refuses to do so by this date, Public.Resource.Org intends to take legal action to procure the Form 990 data in machine-readable format, as requested, not only for these particular returns requested, but for *all* tax-exempt returns filed with the agency. We look forward to your prompt review of this matter.

Should you have any questions, please contact me at (415) 276-6552.

Sincerely,

Thomas R. Burke
DAVIS WRIGHT TREMAINE LLP

cc: Ms. Elizabeth Tucker, Deputy Commissioner for Operations Support, IRS
Mr. Todd Park, Chief Technology Officer, Executive Office of the President
Mr. Jonathan Greenblatt, Director of Social Innovation & Civic Participation
Mr. Steven Van Roekel, Chief Information Officer, Executive Office of the President

EXHIBIT I



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

May 1, 2013

Thomas R. Burke
Davis Wright Tremaine, LLP
505 Montgomery Street
Suite 800
San Francisco, CA 94111-6533

Dear Mr. Burke:

I am responding to your letter dated April 12, 2013, that we received on April 18, 2013. Your letter relates to the Freedom of Information Act (FOIA) request submitted by your client, Carl Malamud, of Public.Resource.Org. Your client asked for certain exempt organizations' Form 990 data in Modernized e-File (MeF) or another machine readable format.

Although Forms 990 may be disclosed to members of the public for inspection under IRC section 6104(b), certain information remains confidential and protected from disclosure under IRC section 6103(a).

Form 990 data in the MeF format do not constitute a recognizable record, but rather a continuous string of numbers that includes confidential return information. Our existing process for providing releasable copies of Forms 990 is to convert the MeF data into a PDF format and withhold confidential return information from the resulting form. The IRS does not have an existing process to convert the releasable portion of Form 990 back into MeF (or other machine readable) format.

For these reasons, we are unable to provide the requested records in MeF format because they are not readily reproducible in a form that also complies with IRC section 6103(a).

If you have any questions please call Tax Law Specialist Denise Higley, ID# 0142331, at 801-620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13108-0089.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bertrand Tzeng".

Bertrand Tzeng
Disclosure Manager
HQ Disclosure Program Operations and FOIA

EXHIBIT J



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

May 9, 2013

Ms. Beth Tucker
Deputy Commissioner for Operations Support
Internal Revenue Service
Department of the Treasury
Washington, DC 20224

Mr. Dominic J. Mancini
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Dear Ms. Tucker and Mr. Mancini:

I am writing in response to Ms. Tucker's letter of April 19, 2013. In addition, I am writing to OIRA as I have never received a response to my letter to Mr. Bershteyn of February 7, 2013. Mr. Bershteyn was kind enough to email me on March 29, 2013 and said I should "rest assured that this issue continues to be looked into."

I very much appreciate the letter from Ms. Tucker, and am delighted on your new initiatives, including the release of 2012 selected data extracts and for your proposal for mandatory e-filing which you have submitted in the Fiscal Year 2014 Revenue Proposals submitted to the Congress.

Unfortunately, your letter was not responsive to the two issues I had raised:

- We currently pay \$2,580 to receive scans of Form 990s. Last month, the shipment consisted of 15 DVDs. We had proposed in our letter to you of January 4, 2013 (and in numerous subsequent followups) that charging us and other subscribers \$2,580 to cut and ship DVDs is a tremendous waste of time and money and that you should consider a simple experiment to use Dropbox or other bulk distribution services.
- We have asked on numerous occasions for consideration of our suggestion that you release the e-File information you collect, either the entire database or at the very least the returns of organizations mandated to e-File.

We believe the \$2,580 you charge for DVD shipments not only does not make sense, it violates all Best Current Practices for distribution of data. Guidestar, Public.Resource.Org and other current customers have all expressed in no uncertain terms that we would welcome something simple and effective, such as Dropbox or an FTP service. That would save you money, it would save us money, and it would be in keeping with what your customers want. We would be happy to help you set that up. It is a trivial task.

Internal Revenue Service and Office of Management and Budget, Page 2

A more fundamental issue is the release of the e-File data that you possess, data that goes back to 2008. The reason advanced for non-release of the data is a nebulous one of "fairness." The argument that you advanced in our meetings at the White House is that it would be somehow unfair to those that have the option of e-filing if the "more transparent" e-File data were released instead of the current low-resolution bitmaps. The worry advanced was that somehow those that have the option of e-Filing would not do so because of the excessive transparency.

The second argument advanced by the IRS, when we proposed that only mandatory e-File data be released, was that it would somehow be unfair to large organizations who would be surprised that their data was being released in a way that people could use it.

The so-called tax policy implications are speculative at best. I have searched diligently and made numerous calls to the Department of the Treasury and nobody can point me to any document or indeed any person who believes this is an actual policy or even a sound reason. The idea that non-profits would object to the data they submit "For Public Inspection" being released is likewise speculative at best. Indeed, we heard a ringing call for release of the e-File data from the Gates, Hewlett, Kellogg, Knight, and Rockefeller Foundations and the Carnegie Corporation.

The issue on the table with the e-File data is not whether or not the data should be released: it is collected to be released and is meant for public inspection. The issue on the table is whether the IRS should deliberately dumb down the data in an effort to obscure the transparency of the information. The current policy of the IRS is to deliberately hinder the usability of the data, even though the General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals states clearly that "researchers, analysts, and entrepreneurs [are looking] to understand the tax-exempt sector better and to create information tools and services to meet the needs of the sector."

Federal law is also very clear that agencies "shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." 5 U.S.C. §552(a)(3)(B). In our email traffic and phone calls with Ms. Julie Rushin, the Deputy Chief Information Officer of the IRS, your agency repeatedly reaffirmed that the only impediment is policy and "we are at the ready to move on this" because release of the data is a trivial technical matter. As with the Dropbox/DVD issue, we're more than happy to help you make this happen.

Release of the e-file data is not just something being asked for by your customers, it is the policy of the Administration and one of the signature initiatives of President Obama. Today's Memorandum on Open Data Policy stressed that "information is a valuable national resource" and that release of machine-readable data "can help fuel entrepreneurship, innovation, and scientific discovery—all of which improve Americans' lives and contribute significantly to job creation."

Your e-File database from 2008 to the present is critical to the efficiency and proper functioning of our non-profit sector, a sector that represents 9.2% of all wages and salaries paid in the United States. Imagine the uproar if the Securities and Exchange Commission deliberately made EDGAR filings more unusable because public corporations wouldn't like "too much transparency." That is what the IRS is doing with the current policy by deliberately making it harder to use.

Internal Revenue Service and Office of Management and Budget, Page 3

The IRS is in full compliance with today's directive that you should use "machine-readable and open formats, data standards, and common core and extensible metadata." The directive tells agencies they should do this with all new systems, but the well-specified Modernized E-File Format already does that! The IRS is well ahead of the rest of the government in this regard, with one notable exception. You are refusing to release the data in a specific attempt to discourage "downstream information processing and dissemination activities."

That is wrong. It hurts the economy, it costs you money, and it hurts your enforcement efforts. We must do better. I hope you will reconsider the issue of release of this important information.

Nonprofit organizations want to access this information as machine-readable data because they'll get better tools. People who donate to nonprofits are crying for better tools. Developers in Silicon Valley and throughout the country would instantly jump on this data and start creating new applications in a matter of weeks. We've offered to help you with an initial release of the data in an open and neutral manner so no IRS resources would have to be expended. The President of the United States has said we should release machine-readable data whenever possible.

In these times of budget difficulties in the government and an economy that desperately needs jobs and growth, we must all do what we can. Release of the IRS e-File database is such a simple step and would have such a dramatic impact, I hope you will at least try to see if this is possible by considering the issue seriously. That has not happened yet.

With best regards,

Carl Malamud
Public.Resource.Org

cc: Mr. Todd Park, U.S. Chief Technology Officer
Mr. Steven VanRoekel, Federal Chief Information Officer
Mr. Jonathan Greenblatt, Director, Office of Social Innovation & Civic Participation

EXHIBIT K



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

May 10, 2013

Hon. Jacob J. Lew
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Lew:

As the Department of the Treasury takes steps to implement President Obama's groundbreaking executive order on Making Open and Machine Readable the New Default for Government Information, I would encourage you to take one simple step:

Release the Form 990 filed by nonprofit corporations as machine-readable data.

The Office of Management and Budget has specifically requested that you "improve the discoverability and usability of existing datasets by making them 'open' using the methods outlined in this Memorandum, prioritizing those that have already been released to the public or otherwise deemed high-value or high-demand." The Form 990 database is one of the most high-value and high-demand databases your department has.

This database is ready to go today: public release is a trivial technical matter. The data has specifically been collected for public release, and it is available today as bitmap images. Releasing the data as machine-readable data would provide instant benefits to a sector that represents 9.2% of wages and salaries in the United States. Just as the SEC's EDGAR database makes our public markets more efficient and transparent, the IRS Form 990 data makes the nonprofit sector function better.

Todd Park from the Executive Office of the President is familiar with this issue, as is Beth Tucker of the Internal Revenue Service. Release of the IRS nonprofit e-file data would have immediate economic benefit and would demonstrate in a concrete way your commitment to President Obama's wonderful new open data policy. This is an easy win. I hope you agree.

With best regards,

Carl Malamud
Public.Resource.Org

cc: Mr. Todd Park, U.S. Chief Technology Officer
Mr. Steven VanRoekel, Federal Chief Information Officer
Mr. Jonathan Greenblatt, Director, Office of Social Innovation & Civic Participation
Ms. Beth Tucker, Deputy Commissioner, Internal Revenue Service